

Message Text

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E.O. 11652: N/A
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SUBJECT: TAXATION OF INSTRUMENTS OF FOREIGN COMMERCE

REFS: (A) STATE 169382 (NOTAL); (B) STATE 191803

1. REVIEW OF TAXES PAID BY INTERNATIONAL TRANSPORT CARRIERS IN CANADA WITH DEPARTMENT OF EXTERNAL AFFAIRS, TRANSPORT CANADA, REVENUE CANADA AND AMERICAN AIRLINES' REPRESENTATIVE HERE INDICATES THAT TAX SITUATION IN CANADA ANALOGOUS TO THAT IN US. THAT IS, FEDERAL GOVERNMENT, AS MATTER OF POLICY, EXEMPTS FOREIGN CARRIERS FROM FEDERAL TAXES ON FUEL, SPARE PARTS, ETC. THIS ACTION, IN CASE OF AIR TRANSPORT, BASED ON RECIPROCITY UNDER TERMS OF BILATERAL AVIATION AGREEMENTS (ARTICLE XI OF US/CANADIAN AVIATION BILATERAL). FOR SHIPPING AND OTHER TRANSPORT MODES, EXEMPTION BASED ON CANADIAN SELF INTEREST IN KEEPING COSTS OF CANADIAN EXPORTS AS LOW AS POSSIBLE. THERE ARE NO FEDERAL OR PROVINCIAL TAXES ON AIRCRAFT OR CONTAINERS SUCH AS THOSE PROPOSED BY CALIFORNIA.

2. IN CANADA, LOCAL JURISDICTIONS (PROVINCES AND CITIES) HAVE AUTHORITY TO LEVY FUEL, REAL ESTATE, SALES AND OTHER
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PAGE 02 OTTAWA 03816 012102Z

BUSINESS TAXES. AMERICAN AIRLINES REPORTED IT PAYS FUEL, REAL ESTATE AND SALES TAXES ON ITS OPERATIONS IN PROVINCES OF ONTARIO AND QUEBEC. EXTERNAL AFFAIRS TOLD US OTHER PROVINCES, WITH EXCEPTION OF NEWFOUNDLAND AND PRINCE EDWARD ISLAND, ALSO LEVY FUEL TAXES IN THEIR JURISDICTIONS.

3. IN AGREEMENTS CONCLUDED WITH CANADA ON EXEMPTION FROM

TAXATION OF INTERNATIONAL OPERATIONS, THE CANADIANS ARE ALWAYS CAREFUL TO CLEARLY SPECIFY THAT EXEMPTIONS AGREED BY THE FEDERAL GOVERNMENT APPLY ONLY TO FEDERAL OR NATIONAL TAXES, SINCE THE FEDERAL GOVERNMENT IS NOT IN A POSITION TO MAKE COMMITMENTS IN RESPECT TO PROVINCIAL TAXES. IN THIS REGARD, BILATERAL AVIATION AGREEMENT STATES (ARTICLE XI) "... EACH CONTRACTING PARTY SHALL EXEMPT THE DESIGNATED AIRLINES OF THE OTHER CONTRACTING PARTY TO THE FULLEST EXTENT POSSIBLE FROM IMPORT RESTRICTIONS, CUSTOMS DUTIES, EXCISE TAXES, INSPECTION FEES, AND OTHER NATIONAL DUTIES AND CHARGES ON FUEL ... ETC."

4. COMMENT: WHILE THE DEPARTMENT OF EXTERNAL AFFAIRS INFORMS US THERE IS NO TAX IN CANADA, FEDERAL OR PROVINCIAL, LIKE THE PROPERTY TAX CALIFORNIA PROPOSES TO APPLY TO SHIPPING CONTAINERS AND AIRCRAFT USED IN INTERNATIONAL COMMERCE, THE DIVISION OF TAXING POWERS IN CANADA BETWEEN THE FEDERAL GOVERNMENT AND THE PROVINCES AND THEIR SUB-DIVISIONS DOES PERMIT THE IMPOSITION OF LOCAL TAXES, AS NOTED ABOVE, WHICH THE FEDERAL GOVERNMENT IS NOT IN A POSITION TO WAIVE. DUEMLING

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